19[47]. **File No.** O Official Secrets/47

Legal **DEPARTMENT**

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Subject. Opinions under the Official Secrets Act, 1923

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R.L.A. Office

An article under the column headed "A Patriot's Notebook" is published under the name of Romesh Chandra in the issue of the Piople's Age dated 8th December 1946 and contains information relating to a secret circular issued by the U.P. Government for detailed information about the Communist Party. The Remembrancer of Legal Affairs is requested to advise whether prosecution can be launched under the Official Secrets Act, 1923.

In the article under the column "Hunt theReds" it is stated:-

> "The political branch of the C.I.D. in every district in theUnited Provinces has received a secret circular asking for detailed information about the communist Party.
>
> The questionnaire begins with asking forfacts about the membership. subscription , address an d constitution of the Provincial and local committees of the Party.
>
> The second question seeks information regarding 'the office bearears and working committee members of the organisation with full particulars regarding thier importance in all India, Provincial and local politics, the character of their influence, that is , hold ov er the masses, organishing ability, penmanship and eloquence'.
>
> The third and fourthe questions seek similar details about 'Allied organisations such as Mazdoor Sabhas, Kisan Sabhas, Railwaymen's Federation, Postal Employees' Unions etc. a nd their office bearers and leaders.
>
> Questions 5 and 6 demand information about 'organisations under Communist Party influence which are not included ' in theabove list.
>
> Other questions ask forlist of 'Communist Party andallied' newspapers, presses and

P.T.O.

publishing houses; and details about the Party's funds, resources, a complete list of subscribers, items of expenditure etc.

Altogether an interesting document.

The Home Department is certainly driving at a breakneck speed. But the tune is still 'Rule Britania' and the practice remains bullets."

The aforesaid information is purloined form the secret circular issued by the United Procinces Government . It is not known whether or not Romesh Chandra under whose name the article is published is a fictitious person. ~~XXXXXXX~~ Whatever that may be , the editor of the Piople's Age voluntarily received the secret information communicated to him in contravention of the Official Secrets Act, 1923 and has communicated it to the public by publisheng it in theissue dated 8th December 1946. He can therfore be prosecuted for the offences under sub-sections (1) and (2) of section 5 of the Official Secrets Act, 1923 (see R.L.A.'s opinion No. 318-Conf 1 , dated 25th November 1946).

O.C. Id/-D.V.W.

Remembrancer of Legal Affairs.

U.R. to H.D. (Poll.) No. 100-Cofc. , dated the 13th March 1947.

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Legal Department.

R.I.No. 1884, dated 17-2-47.

Submitted.

2. In his letter at p.1 ante, the D.M., Ahmednagar, has requested the H.D. to state whether the Government of India has issued any order empowering the F.C. Magistrates, as required by section 13(1) of the Official Secrets Act, 1923, to hear cases under section 3 of the Act; or authorised the District Magistrates to delegate their powers to hear such cases to the F.C. Magistrates subordinate to them. In its note at p.3 ante, H.D. states, that it is not aware of any such orders. But as the D.Ms. and Presidency Magistrates are empowered to hear such cases, H.D. is of the opinion that the D.M. Ahmednagar should be asked to hear the case him self. The papers are being shown to L-D. before issue of the reply.

3. The view taken by H.D. is correct.

4. Papers may be returned with an endorsement "seen and returned".

K.B.B.
25/2.

A.S. Under section 13(1) of the Indian Official, Secrets Act, 1923, a Distict or Presidency Magistrate is competant to try any affence under the Act, The new expressed in the H.D. office note that the District Magistrate, Ahmednagar, should be asked to try the case himself is correct.

The papers may be "Seen and returned "to the H.D.

Id/-
dt/-25/2/

I agree

Id/-R.T.K.
dt/-26/2/

R.L.A's Office.

Seen and returned.

O.C. Id/- D.V.W.

Remembrancer of Legal Affairs .

U.R. to H.D. No. 8246 ,dated the 6-3-47.

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Office of the R.L.A.

In the issue of "Pioples Age" dated 9-3-1947 an article by Nikhil Chakra varty under the heading "No truth behind Suhrawardy's broad side against Communists" has beeh - Published containing secret information in the Memoranda issued by the Bengal Government. In the linked case, it appears that in theissue of the same Paper dated 2nd March 1947 the confidential circular of the Government of Orissa has been published. The question raised in both these cases is whether the publication offends against the Indian Official Secrets Act, 1923 and if so, against which section.

Under clause (a) of section 5(1) of the Indian Official Secrets Act, if any person having in his possession or control any secret official code etc. or information which has been made or obtained in contravention of this Act. or which has been entrusted in confidence to him by any person holding office under His Majesty, or which he has obtained or to which he has had access owing to his position as a person who holds or has held office under His Majesty , or as a person who holds or has held a contract made on behalf of His Majesty, or as a perosn who is or has been employed under a person who holds or has held such an office or contract willfully communicates the code or pass word, etc. or any information to any person other than a person to him whom he is authorised to communicate it ,or a Court of Justice or a person to whom it is, in the interests of the State, his duty to communicate, it he shall be guilty of an offence under that section. It appears that this provision is primarily intended to aim at Government officers who commuicate the official secret information . The words "made or obtained" in contravention of this Act appear to contemplate the making or obtaining officeal secret information within the meaning

of clause (b) and (c) of section 3(1) It is true that the receipt of official secret information in contravention of this Act, is an offence under section 5(2) but it does not appear possible to import such contravention within the meaning of clause (a) of section 5(1) and hold the editor of the Press liable thereunder for communicating a secret information by publishing it. Consequently clause (a) of section 5(1) does not apply and to that extent the R.L.A.'s opinion No. 359-P-Confl, dated the 14th August 1956 requires to be modified.

Under section 5(2) of the Official Secrets Act what is necessary is the receipt of the official secret information knowing or having reasonable ground to believe at the time when it is received that the information is communicated in contravention of this Act. The officer who had the custody of the official secret information must presumably have communicated it in contravention of the Act and the editor who published the infromation in both these cases must be deemed to have received it (directly in one case, and indirectly through Mr. Chakravarty in another case) knowing or having reasobable ground to believe that the information was communicated to him in contravention of this Act. Consequently, the editor can be prosecuted for the offence under sub-section (2) of section 5. He can also be prosecuted under clause (b) of section 5(1) for using the information by publishing it in paper provided it can be proved that such publication was prejudicial to the safety to the State. Further he can also be prosecuted under clause (b) of section 6(2) for having communicated the official secret information by publishing it provided it can be proved that such publication was prejudicial to the

V.VK. 10/5/56/

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safety of the State.

The offence under section 5 is cognizable and non-bailable but the offence under clause (b) of section 6(2) is non-cognizable and bailable. (See section 12). Under sub-section (c) of section 13 for the purposes of the trial of a person for an offence under this Act, the offence may be deemed to have been committed either at the place in which the same actually was committed or at any place in British India in which the offender may be found. Consequently the editor of the "Pepples Age" who appears primarily responsible for receiving or publishing the information can be tried in this Province although it may be difficult to say whether he received the official secret infromation within or without this province.

O.C. Id/-P.N.L.
dt/-19/6/

Remembrancer of Legal Affairs.

U.R. to H.D. (Political), No. 6379, dated the 19th June 1947.

V.VK. 10.5.1947.

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L.D.R.I.No. 7418 dt. 23-6-47.

Submit ed.

The question in these papers is whether action under s.5 of the Official Secrets Act. 1923 nan be taken against the publisher of the paper "Ayurved Jagat" for receiving information contained in confidential Reports of the Inspection committee appointed by the Board of Indian Systems of Medicine, Bombay (vide notes at pp. 38-39 ante).

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The Inspection reports, though marked confidential would not come within thepurview of the Indian Official Secrets Act, 1923 as they pertain to a private institution (see Emperor v. Karanjia, 48 Bom. L.R. 151).

O.C. Id/-D.V.W.
Remembrancer of Legal Affairs.

U.R. to H.& L.G.D. No. 6816 , dated the 3rd July 1947.

V.VK. 10/5/1956/

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Office of the R.L.A.

STATEMENT OF THE CASE.

In its issue dated the 2nd March 1947 the "Peoples Age" published a confidential circular of the Government of Orissa. In the issue of the same paper dated the 9th March 1947 , an article by Nikhil Chakravarty quoting extracts from two secret memoranda issued by the Government of Bengal was published. The question raised for consideration was whether these publications offend against the provisions of the Indian Official Secrets Act, 1923 and if so, against which section.

On a reference to the R.L.A. he advised in his opinion, No. 6379 , dated the 19th June 1947 , as follows:-

"Under clause (a) of section 5(1) of the Indian Official Secrets Act, if any person having in his possession or control any secret official code etc. or information which has been made or obtained in contravention of this Act, or which has been entrusted in confidence to him by any person holding office under His Majesty, or which he has obtained or to which he has had access owing to his position as a person who holds or has held office under His Majesty, or as a person who holds or has held a contract made on behalf of His Majesty , or as a person who is or has been employed under a person who holds or has held such an office or contract wilfully communicates the code or pass word, etc. or any information to any person other than a person to whom he is authorised to communicate it, or a Court of Justice or a person to whom it is , in the interests of the State, his duty to communicate it, he shall be guilty of an offence under that section. It appears that this provision is primarily intended to aim at Government officers who communicate the official secret information. The words "made or obtained" in contravention of this Act appear to contemplate the making or obtaining official secret information within the meaning

of clause (b) and (c) of section 3(1). It is true that the receipt of official secret information in contraventi-n of this Act, is an offence under section 5(2) but it does not appear possible to import such contravention within the meaning of clause (a) of section 5(1) and hold the editor of the Press liable thereunder for communicating a secret information by publishing it. Consequently clause (a) of section 5(1) does not apply and to that extent the R.L.A.'s opinion No. 359-P-Confl , dated the 14th August 1946 requires to be m dified.

Under section 5(2) of the Official Secrets Act what is necessary is the receipt of the official secret information knowing or having or having reasobable ground to belive at the time when it is received that the information is communicated in contravention of this Act. The officer who had the custody of the official secret information must presumably have communicated it in contravention of theAct and the editor who published theinformation in both these cases must be deemed to ha.e received it (directly in one case, and indirectly thro gh Mr. Chakravarty in another case) knowing or having reasonable groung to believe that the information was communicated to him in contravention of this Act. Consequently, the editor can be prosecuted for the offence under sub-section (2) of section 5. He can also be prosecuted under clause(b) of section 5(1) for using the information by publishing it in Paper provided it can be proved that such publication was prejudicial to the safety to the State. Further he can also be prosecuted under clause (b) of section 6(2) for having communicated theofficial secret information by publishing it provided it can be prove d that such publication was prejudicial to thee safety of the State. "

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In his note dated the 27th June 1947 , the Secretary, Home Department observes :-

"The opinion given by the R.L.A. is not very clear to me. To establish an offence under section 5(2) , I think it will be necessary to establish 'receiving ' and communication in contravention of the Act, I do not see that there is evidence on the point. For other offences, it is necessary to establish that the act is prejudicial to the safety of the State. R.L.A. has not advised whether it will be possible to establish that".

The matter is therefore again referred to the R.L.A. with a request to obtain the opinion of the Advocate General.

To establish the offence under section 5(2) what is necessary to prove is that the accused voluntarily received the secret information Knowing or having reasonable grounds to believe at the time when he receives it, that the informatio was communicated o him in contravention of the Act. Section 2 of the English Official Secrets Act corresponds to section 5 of the Indian Official Secrets Act; 1923 and in interpreting the formenr provision in R.V. Crisp and Honcewood (1919, 83 J.P. 121) it was held that section 2 applies to any document or information of any official character which had been obtained by a person holding office under HIs Majesty provide d that he communicated it to some person towhom he was not authorised tocommunicate. The Editor of the People's Age voluntarily received the official secret information . The prosecution will have to prove that he knew or had reasonable ground to believe that it was communicated to him in contravention of the Act, that ~~XX XXXX XX XXX XXXXXXXX~~ is to say, by a person who was not authorised to communicate. It would be difficult to impute knowledge; but it may not be difficult ~~to impute knowledge, bu it may not be difficult~~ to prove that he had reasonable ground to believe. Obviously the information was an official secret information and such information cannot be

disclosed or communicated as a by authority of Government . The reasonable inference would be that this information must have been communicated to him by an unauthorised perso . Consequently although there is no direct evidence to prove that the editor had knowledge or reasonable ground to believe etc. the fact that it was an official secret information and that Government did not authorise the communication thereof would shift the burden of proof on to the accused.

As regards the other offences it is true that it will be necessary to establish that the act is prejudicial to the safety of the State. But since it is a question of fact and there are no materials on record , it will not be possible for the R.L.A. to advise whether it would be possible toestablish it. The Bengal Government and the Orissa Government who are ap arently in full possession of all facts will have to be consulted on this point before launching the prosecution.

As the matter is important the Advocate General is requested to favour Government with his opinion.

O.C.

Id/-D.V.W.
Remembrancer of Legal Affairs.

U.R. to the Advocate General, Bombay , No. 291- Confl.,dated the 3rd July 1947.

V.VK. 10/5/1956/ 4C.

ADVOCATE GENERAL'S CHAMBERS?
HIGH COURT:
Bombay, 30th July 1947.

U.R. to the Advocate General Bombay,
No.291-Confl., dated the 3rd July 1947.

Subject:- People's Age.
Proposed prosecution of -
under the Official Secret's Act.

O P I N I O N.

The Article of the 2nd March 1947, refers to two Memoranda issued by Mr. Martyn, Additional Secretary, Home and Political Department , Goverment of Bengal , dated January , 18th and February, 5th. They are both described as "Secret-le, pramda". It is patent therefore that those responsible for the Article and its publication knew that the information was "Secret", i.e. not meant for communication to the public or to any unauthorised person.

In my opinion there is an offence under Section 5(2) of the Official Secrets Act. The ingredients under that Section are --

a) that the accused voluntarily received secret information

b) That when he received it he knew or had reasonable ground to believe that the information was being communicated in contravention of the Act,

As to (a) that the persons concerned with the two--- Articles received the information voluntarily is hardly----- capable of being questioned - As to (b) it may not be easy to show that they had in fact the requisite knowledge, but it is easy to draw an inference that they had reason to believe that the information was being communicated in contravention of the Act. If evidence can be led that no one was authorised --

authorised by the Government of Bengal to communicate the information to an one or at any rate to the People's Age, the logical consequence would be that the paper got the information from someone who gave it in contravention of the Act. They could not have believed that any one was authorised by Government to comminicate it to them. The very fact that it was known to be a "Secret" i.e. information not meant for the public in itself shows that it could not be communicated to a news-paper under authority of Government.

I also think that Section 5(1) of the Act applies. It has been held by the Bombay High Court that "person " in that Section is not confined to an Official but includes anyone who has got information in contravention of the Act.Section 48 - Bom.L.R. -151 at 154. So if the Peoples Age got the information in contravention of the Act (as they did) and publishes it, an offence is committed under Section 5(1)(a).

All the above considerations apply to the Article of the 9th March.

Sd/-V.K.Daptary
Advocate General.

U.O.R. to H.D. No. 336-confl. dt. 4-8-1947.

V.VK. /10/5/1956/.

4C.